

**NOTICE PUBLICATION/REGULATIONS SUBMISSION**

(See instructions on reverse)

For use by Secretary of State only

STD. 400 (REV. '4-99)

<b>OAL FILE NUMBERS</b>	<b>NOTICE FILE NUMBER</b> Z-	<b>REGULATORY ACTION NUMBER</b>	<b>EMERGENCY NUMBER</b> 00092000E
For use by Office of Administrative Law (OAL) only		SEP 20 AM 11:50	
<b>NOTICE</b>		<b>REGULATIONS</b>	
<b>AGENCY WITH RULEMAKING AUTHORITY</b> Department of Corrections and Rehabilitation			<b>AGENCY FILE NUMBER (if any)</b> 06-0047

**A. PUBLICATION OF NOTICE** (Complete for publication in Notice Register)


<b>1. SUBJECT OF NOTICE</b>		<b>TITLE(S)</b>	<b>FIRST SECTION AFFECTED</b>	<b>2. REQUESTED PUBLICATION DATE</b>
<b>3. NOTICE TYPE</b> <input type="checkbox"/> Notice re Proposed Regulatory Action <input type="checkbox"/> Other		<b>4. AGENCY CONTACT PERSON</b>	<b>TELEPHONE NUMBER</b> ( )	<b>FAX NUMBER (Optional)</b> ( )
<b>OAL USE ONLY</b>	<b>ACTION ON PROPOSED NOTICE</b> <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn		<b>NOTICE REGISTER NUMBER</b>	<b>PUBLICATION DATE</b>

**B. SUBMISSION OF REGULATIONS** (Complete when submitting regulations)

<b>1a. SUBJECT OF REGULATION(S)</b> Dental		<b>1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S)</b>	
<b>2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S)</b> (Including title 26, if toxics-related)			
<b>SECTION(S) AFFECTED</b> (List all section number(s) individually)	<b>ADOPT</b> 3352.2		
	<b>AMEND</b> 3350.1, 3352.1, 3354, 3358		
	<b>REPEAL</b>		
<b>TITLE(S)</b> 15			
<b>3. TYPE OF FILING</b>			
<input type="checkbox"/> Regular Rulemaking (Gov. Code, § 11346) <input type="checkbox"/> Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code, §§ 11349.3, 11349.4) <input type="checkbox"/> Emergency (Gov. Code, § 11346.1(b)) <input type="checkbox"/> Emergency Readopt (Gov. Code, § 11346.1(h)) <input type="checkbox"/> Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, § 11346.1) <input type="checkbox"/> Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Government Code §§ 11346.2 - 11346.9 prior to, or within 120 days of, the effective date of the regulations listed above. <input type="checkbox"/> Print Only <input type="checkbox"/> Changes Without Regulatory Effect (Cal. Code Regs., title 1, § 100) <input checked="" type="checkbox"/> Other (specify) Emerg. Op. Nec. PC 5058.3			
<b>4. ALL BEGINNING AND ENDING DATES OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE</b> (Cal. Code Regs. title 1, §§ 44 and 45)			
<b>5. EFFECTIVE DATE OF REGULATORY CHANGES</b> (Gov. Code, §§ 11343.4, 11346.1(d))			
<input type="checkbox"/> Effective 30th day after filing with Secretary of State <input checked="" type="checkbox"/> Effective on filing with Secretary of State <input type="checkbox"/> Effective other (Specify)			
<b>6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY</b>			
<input checked="" type="checkbox"/> Department of Finance (Form STD. 399) (SAM §6660) <input type="checkbox"/> Fair Political Practices Commission <input type="checkbox"/> State Fire Marshal <input type="checkbox"/> Other (Specify)			
<b>7. CONTACT PERSON</b> Ann Cunningham		<b>TELEPHONE NUMBER</b> ( ) 341-7325	<b>FAX NUMBER (Optional)</b> ( ) 341-7366
		<b>E-MAIL ADDRESS (Optional)</b>	

8.

I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.

<b>SIGNATURE OF AGENCY HEAD OR DESIGNEE</b> 	<b>DATE</b> 8-31-06
<b>TYPED NAME AND TITLE OF SIGNATORY</b> JAMES E. TILTON, Secretary (A), Department of Corrections and Rehabilitation	

## **Text of Proposed Emergency Regulations**

**In the following text, underlining indicates adopted or amended text; and strikethrough indicates deleted text.**

### **Section 3350.1 Heading is amended to read:**

3350.1. Medical and Dental Treatment/Service Exclusions.

### **Subsection 3350.1(a) through (c) are unchanged.**

### **Subsection 3350.1(d) is amended to read:**

(d) Treatment for those conditions that are excluded within these regulations may be provided in cases where all of the following criteria are met:

(1) The inmate's attending physician and/or dentist prescribes the treatment.

(2) The service is approved by the medical authorization review committee, and/or the dental authorization review committee, and the health care review committee. The decision of the review committees to approve an otherwise excluded service shall be based on:

(A) Available health and dental care outcome data supporting the effectiveness of the services as medical and/or dental treatment.

(B) Other factors, such as:

1. Coexisting medical and/or dental problems.

2. Acuity.

3. Length of the inmate's sentence.

4. Availability of the service.

5. Cost.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Section 5054, Penal Code.

3352.1. Health Care Review Committee.

### **Subsection 3352.1(a) is amended to read:**

(a) The health care review (HCR) committee shall meet as often as necessary to review cases approved by the MAR committee for medical services and Dental Authorization Review (DAR) committee for dental services otherwise excluded by these criteria in section 3350.1(d).

**Subsection 3352.1(b) is amended to read:**

(b) The HCR ~~C~~committee shall consist of, but not be limited to, the following:

~~1- (1) Assistant Deputy Director, Clinical Policy and Programs Branch, Operations, Health Care Services Division (HCSO) Division of Correctional Health Care Services (DCHCS).~~

~~2- (2) Chief Medical Officer Statewide Medical Director, Health Policy, HCSO DCHCS.~~

~~3- (3) Assistant Deputy Director, Health Care Administrative Operations Branch, Program Development, HCSO DCHCS.~~

(4) Statewide Dental Director, DCHCS.

(5) Selected Dental designees.

4. (6) Two selected specialist physicians.

~~5- (7) Nonvoting utilization management nurse, as necessary.~~

**Subsection 3352.1(c) is amended to read:**

(c) Decisions to approve or deny an excluded service requires at least one Assistant Deputy Director, ~~HCSO DCHCS~~, or designee shall be in attendance. All decisions shall be documented in the inmate's health record.

**Subsection 3352.1(d) is amended to read:**

(d) Decisions regarding medical services which have been referred by the MAR committee shall be voted on by the Assistant Deputy Director, Clinical Policy and Programs Branch, Statewide Medical Director and the medical staff of the HCR. Decisions to approve or deny an excluded service shall be based upon a quorum of the majority of the above members. The treating physician shall notify the inmate of the committee's decision regarding medical services.

**Subsection 3352.1(e) is amended to read:**

(e) Decisions regarding dental services which have been referred by the DAR committee shall be voted on by the Assistant Deputy Director, Clinical Policy and Programs Branch, Statewide Dental Director and the dental staff of the HCR. Decisions to approve or deny an excluded service shall be based upon a quorum of the majority of the above members. The treating dentist shall notify the inmate of the committee's decision regarding dental services.

NOTE: Authority cited: section 5058, Penal Code. Reference: section 5054, Penal Code.

**New Section 3352.2 is adopted to read:**

3352.2. Dental Authorization Review Committee.

**New subsection 3352.2(a) is adopted to read:**

(a) Each departmental institution shall establish a Dental Authorization Review (DAR) committee. The DAR shall be established for the purpose of:

- (1) Approving or disapproving requests for otherwise excluded dental services,
- (2) Reviewing treatment recommendations for special dental care needs, and
- (3) Evaluating the cost efficiency and effectiveness of the dental services provided at the institution.

**New subsection 3352.2(b) is adopted to read:**

(b) Membership of the DAR shall be composed of representatives from each institution's dental care staff. DAR membership shall consist of the Chief Dentist, or designee, a Staff Dentist as Chairperson, and a Staff Dentist as Vice-Chairperson. Representatives from other institution services or divisions shall be invited, when appropriate, to committee meetings.

**New subsection 3352.2(c) is adopted to read:**

(c) DAR committee decisions shall be based upon the following criteria established in section 3350.1 (d). Committee decisions shall be documented in the inmate's unit health record. Cases

that receive committee approval shall be forwarded, along with all supporting documentation, to the HCR. The treating dentist shall notify the inmate of the committee's decision.

3354. Health Care Responsibilities and Limitations.

**Subsections 3354(a) through (e) are unchanged.**

**Subsection 3354(f) is amended to read:**

(f) Dental Sick Call. Routine dental treatment shall not be provided during sick call. Inmates requesting dental treatment shall be evaluated and scheduled into one of the following categories:

(1) ~~Urgent or e~~Emergency care category. ~~Inmates in considerable pain or with an acute illness requiring immediate dental service. Such inmates shall be provided treatment as soon as possible.~~ A dental emergency, as determined by health care staff, includes any medical or dental condition for which evaluation and treatment are necessary to prevent death, severe or permanent disability, or to alleviate disabling pain. Immediate treatment shall be provided and will be available to such inmates 24 hours a day, 7 days a week.

(2) ~~Immediate care category. Inmates whose dental condition prevents them from carrying out a daily work assignment. Such inmates shall be treated within 48 hours by a dentist during normal clinic hours.~~ Urgent care categories:

(A) Priority 1A: Inmates requiring treatment of an acute oral or maxillo-facial condition, which is likely to remain acute, worsen, or become life threatening without immediate intervention. Such inmates shall receive treatment within 24 hours of diagnosis and assignment to Dental Priority 1A.

(B) Priority 1B: Inmates requiring treatment for a sub-acute hard or soft tissue pathology. Such inmates shall receive treatment within 30 days of diagnosis and assignment to Dental Priority 1B.

(C) Priority 1C: Inmates requiring early treatment for any unusual hard or soft tissue pathology. Such inmates shall receive treatment within 60 days of diagnosis and assignment to Dental Priority 1C.

(3) Routine care category: Inmates whose dental condition does not require immediate treatment by a dentist. Such inmates shall be scheduled in chronological order, and, when practical, appointments shall be scheduled to avoid interference with the inmate's work training incentive program hours. Interceptive care category: Inmates shall have over 6 months remaining to serve on their sentence within the department, and be eligible for Priority 2 care regardless of oral health self-care. Such inmates shall receive treatment within 120 days of diagnosis and assignment to Priority 2 care.

(A) Priority 2A: Inmates requiring advanced caries or advanced periodontal pathology requiring the use of intermediate therapeutic or palliative agents or restorative materials, mechanical debridement, or surgical intervention.

(B) Priority 2B: Edentulous or essential edentulous, or with no posterior teeth in occlusion requiring a complete denture, or one or more missing anterior teeth resulting in the loss of anterior dental arch integrity, requiring a transitional anterior partial denture.

(C) Priority 2C: Moderate or advanced periodontitis requiring non-surgical deep scaling and Root Planning procedures.

(D) Priority 2D: Chronically symptomatic impacted tooth requiring removal or specialty referral. Surgical procedures for the elimination of pathology, or restoration of essential physiologic relationship.

(4) Routine rehabilitative care category: Inmates shall have over 12 months remaining to serve on their sentence within the department, and shall meet oral health self-care requirements. Such inmates shall receive treatment within one year of diagnosis and assignment to Priority 3 care.

(A) Priority 3A: Inmates requiring a maxillary and/or mandibular partial denture due to insufficient number of posterior teeth to masticate a regular diet.

(B) Priority 3B: Carious or fractured dentition requiring restoration with definitive restorative materials or transitional crowns.

(C) Priority 3C: Gingivitis or mild periodontitis requiring routine prophylaxis.

(D) Priority 3D: Definitive root canal treatment for non-vital, single rooted teeth, which are restorable with available restorative materials.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Section 5054, Penal Code.

3358. Artificial Appliances.

**Subsection 3358(a) is unchanged.**

(a) Appliance Categories. Appliances include but are not limited to eyeglasses, artificial eyes, dental prosthesis, artificial limbs, orthopedic braces and shoes, and hearing aids. An inmate's need for such appliance shall be based on medical necessity as described in section 3350(b)(1).

**Subsection 3358(b) is amended to read:**

(b) Possession of Appliance. No inmate shall be deprived of a prescribed orthopedic or prosthetic appliance in the inmate's possession upon arrival into the department's custody or properly obtained while in the department's custody unless a department physician or dentist determines the appliance is no longer needed and the inmate's personal physician, if any, concurs in that opinion. ~~When gold is removed from an inmate's mouth, the inmate shall sign a CDC Form 238, Receipt for Dental Gold Removed from Inmate's Mouth, and select a method of disposal indicated on the form.~~

**Subsection 3358(c) is amended to read:**

(c) Purchase of Appliance. Prescribed appliances shall be provided at state expense if an inmate is indigent, otherwise the inmate shall purchase prescribed appliances through the department or

a vendor of the inmate's choice as directed by the chief medical or dental officer. Departmental dentists shall not order prescribed dental appliances made from precious metal, and departmental dentists or dental laboratories shall not perform repairs to existing dental prosthesis made from precious metal. If an inmate's existing dental appliance made from precious metal needs repair, the dentist shall offer the inmate the option of having a new prosthesis made. When a prescribed appliance is to be provided ~~or use of precious metals is necessary and a reasonable substitute is not available or practical to repair, remake, or alter any crown, bridge, or other prosthetic appliance,~~ the inmate shall sign a CDC Form 193, Trust Account Withdrawal Order (Rev. 1/88), to pay for the materials.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Section 5054, Penal Code.



## **NOTICE OF ADOPTION OF EMERGENCY REGULATIONS**

### **California Code of Regulations Title 15, Crime Prevention and Corrections Department of Corrections and Rehabilitation**

**NOTICE IS HEREBY GIVEN** that the Secretary of the California Department of Corrections and Rehabilitation (CDCR), pursuant to the authority granted by Government Code Section 12838.5, Penal Code (PC) Section 5058, and the rulemaking authority granted by PC Section 5058.3, in order to implement, interpret and make specific PC Section 5054, proposes to adopt and amend Sections 3350.1, 3352.1, 3352.2, 3354 and 3358 (CCR), Title 15 concerning inmate dental services.

#### **PUBLIC HEARING:**

Date and Time: December 7, 2006 – 9:00 am to 10:00 am  
Place: Corrections Standards Authority  
Large Conference Room  
660 Bercut Drive  
Sacramento, CA 95814  
Purpose: To receive comments about this action.

#### **PUBLIC COMMENT PERIOD:**

The public comment period will close, December 7, 2006, at 5:00 p.m. Any person may submit public comments in writing (by mail, by fax, or by e-mail) regarding the proposed changes. To be considered by the Department, comments must be submitted to the CDCR, Regulation and Policy Management Branch, P.O. Box 942883, Sacramento, CA 94283-0001; by fax at (916) 341-7366; or by e-mail at [RPMB@cdcr.ca.gov](mailto:RPMB@cdcr.ca.gov) before the close of the comment period.

#### **CONTACT PERSON:**

Please direct any inquiries regarding this action to:

**Timothy M. Lockwood, Chief  
Regulation and Policy Management Branch  
Department of Corrections and Rehabilitation  
P.O. Box 942883, Sacramento, CA 94283-0001  
Telephone (916) 341-7390**

In the event the contact person is unavailable, inquiries should be directed to the following back-up person:

**Ann Cunningham  
Regulation and Policy Management Branch  
Telephone (916) 341-7390**

Questions regarding the substance of the proposed regulatory action should be directed to:

**Dr. William Kuykendall  
Dental Program  
Division of Correctional Health Care Services  
Telephone (916) 327-8925**

#### **LOCAL MANDATES:**

This action imposes no mandates on local agencies or school districts, or a mandate which requires reimbursement pursuant to Government Code Section 17561.

**FISCAL IMPACT STATEMENT:**

- Cost or savings to any state agency: FY 05/06 \$17.3 million & FY 06/07 \$55.1million
- Other nondiscretionary cost or savings imposed on local agencies: *None*
- Cost or savings in federal funding to the state: *None*

**EFFECT ON HOUSING COSTS:**

The Department has made an initial determination that the proposed action will have no significant effect on housing costs.

**COST IMPACTS ON REPRESENTATIVE PRIVATE PERSONS OR BUSINESSES:**

The Department is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

**SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT ON BUSINESS:**

The Department has initially determined that the proposed regulations will not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

**EFFECT ON SMALL BUSINESSES:**

The Department has determined that the proposed regulations may not affect small businesses. It is determined that this action has no significant adverse economic impact on small business because they are not affected by the internal management of state prisons.

**ASSESSMENTS OF EFFECTS ON JOB AND/OR BUSINESS CREATION, ELIMINATION OR EXPANSION:**

The Department has determined that the proposed regulation will have no effect on the creation of new, or the elimination of existing jobs or businesses within California, or affect the expansion of businesses currently doing business in California.

**CONSIDERATION OF ALTERNATIVES:**

The Department must determine that no reasonable alternative considered by the Department, or that has otherwise been identified and brought to the attention of the Department, would be more effective in carrying out the purpose for which the action is proposed, or would be as effective and less burdensome to affected private persons, than the proposed regulatory action. Interested persons are accordingly invited to present statements or arguments with respect to any alternatives to the changes proposed at the scheduled hearing or during the written comment period.

**AVAILABILITY OF PROPOSED TEXT AND INITIAL STATEMENT OF REASONS:**

The Department has prepared, and will make available, the text and the Initial Statement of Reasons (ISOR) of the proposed regulations. The rulemaking file for this regulatory action, which contains those items and all information on which the proposal is based (i.e., rulemaking file) is available to the public upon request directed to the Department's contact person. The proposed text, ISOR, and Notice of Proposed Action will also be made available on the Department's website <http://www.cdcr.ca.gov>.

**AVAILABILITY OF THE FINAL STATEMENT OF REASONS:**

Following its preparation, a copy of the Final Statement of Reasons may be obtained from the Department's contact person.

**AVAILABILITY OF CHANGES TO PROPOSED TEXT:**

After considering all timely and relevant comments received, the Department may adopt the proposed regulations substantially as described in this Notice. If the Department makes modifications which are sufficiently related to the originally proposed text, it will make the modified text (with the changes clearly indicated) available to the public for at least 15 days before the Department adopts the regulations as revised. Requests for copies of any

modified regulation text should be directed to the contact person indicated in this Notice. The Department will accept written comments on the modified regulations for 15 days after the date on which they are made available.

**INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW:**

Penal Code (PC) Section 5000 provides that commencing July 1, 2005, any reference to the Department of Corrections in this or any code, refers to the CDCR, Division of Adult Operations.

PC Section 5050 provides that commencing July 1, 2005, any reference to the Director of Corrections, in this or any other code, refers to the Secretary of the CDCR. As of that date, the office of the Director of Corrections is abolished.

PC Section 5054 provides that the supervision, management, and control of the State prisons, and the responsibility for the care, custody, treatment, training, discipline, and employment of persons confined therein are vested in the director. Commencing July 1, 2005, the supervision, management, and control of the state prisons, and the responsibility for the care, custody, treatment, training, discipline, and employment of persons confined therein are vested in the Secretary of the CDCR.

PC Section 5058 authorizes the Director to prescribe and amend regulations for the administration of prisons.

PC Section 5058.3 authorizes the Director to adopt, amend, or repeal emergency regulations conducted pursuant to Government Code Section 11340.

- This action amends and adopts provisions governing the dental care services within the California Department of Corrections and Rehabilitation (Department). California Code of Regulations, Sections are being amended as a result of a Settlement Agreement, in the case of *Perez v. Tilton, et al.*, Case No. C05-5241 JSW, U.S. District Court Northern District of California. This Settlement Agreement is a result of a challenge regarding inmates within the Department not receiving constitutionally adequate dental care. The initial implementation, as ordered by Judge White, must begin immediately.
- Due to the serious dental care needs of inmates within the California Department of Corrections and Rehabilitation, and its inability to currently meet the immediate needs of the inmates, and pursuant to *Perez vs. Tilton*, it is necessary that these regulations be promulgated on an emergency basis.
- These regulations, pursuant to the Settlement Agreement, provide a level of dental care required under the Eighth Amendment. These regulations implement a new Dental Priority System and address the needs of patients in a timely manner ensuring appropriate dental care. These regulations establish a Dental Authorization Review (DAR) Committee as a subcommittee which works in conjunction with the Medical Authorization Review (MAR) Committee at each institution. The Health Care Review Committee reviews cases approved by the MAR and DAR committees. These committees are necessary and establish a central point of review and approval for medical and dental treatment.
- Health care responsibilities and limitations regarding emergency, urgent, interceptive and routine rehabilitative dental care are amended and made specific regarding the timeframe in which inmates are treated.
- In addition, changes for enhanced clarity, including department and divisional name changes due to the reorganization, numerical corrections, and changes in punctuation are also made to meet departmental standards.

## **INITIAL STATEMENT OF REASONS:**

This action amends and adopts provisions governing the dental care services within the California Department of Corrections and Rehabilitation (Department). California Code of Regulations, Sections are being amended as a result of a Settlement Agreement, in the case of *Perez v. Tilton, et al.*, Case No. C05-5241 JSW, U.S. District Court Northern District of California. This Settlement Agreement is a result of Inmate Perez's challenge regarding inmates within the Department not receiving constitutionally adequate dental care. The initial implementation, as ordered by Judge White, must begin immediately.

Due to the serious dental care needs of inmates within the California Department of Corrections and Rehabilitation, and its inability to currently meet the immediate needs of the inmates, and pursuant to *Perez vs. Tilton*, it is necessary that these regulations be promulgated on an emergency basis.

These regulations, pursuant to the Settlement Agreement, provide a level of dental care required under the Eighth Amendment. These regulations implement a new Dental Priority System and address the needs of patients in a timely manner ensuring appropriate dental care. These regulations establish a Dental Authorization Review (DAR) Committee as a subcommittee which works in conjunction with the Medical Authorization Review (MAR) Committee at each institution. The Health Care Review Committee reviews cases approved by the MAR and DAR committees. These committees are necessary and establish a central point of review and approval for medical and dental treatment.

Health care responsibilities and limitations regarding emergency, urgent, interceptive and routine rehabilitative dental care are amended and made specific regarding the timeframe in which inmates are treated.

In addition, changes for enhanced clarity, including department and divisional name changes due to the reorganization, numerical corrections, and changes in punctuation are also made to meet departmental standards.

The Department has determined that no reasonable alternatives to the regulations have been identified or brought to the attention of the Department that would lessen any adverse impact on small business.

The Department has made an initial determination that the action will not have a significant adverse economic impact on business. Additionally, there has been no testimony or other evidence provided that would alter the Department's initial determination.

The Department has determined that this action imposes no mandates on local agencies or school districts, or a mandate, which requires reimbursement pursuant to Part 7 (Section 17561) of Division 4.

The Department must determine that no alternative considered would be more effective in carrying out the purpose of this action or would be as effective, and less burdensome to affected private persons than the action proposed.

**Section 3350.1 Heading is amended** to incorporate the word Dental into the section regarding treatment/service exclusions. This section includes specifics for both medical and dental services. This is necessary to clarify the specifics of both medical and dental treatment exclusions.

**Subsection 3350.1(a) through (c) are unchanged.**

**Subsection 3350.1(d) is amended** to include the attending dentist regarding inmate treatment. It also includes the dental authorization review committee as a part of the whole health care review of medical and dental treatment of inmates. This is necessary to ensure equal representation for dentistry as an interface with the oversight of the Health Care Review (HCR) Committee.

**Subsection 3352.1(a) is amended** to include the Dental Authorization Review (DAR) Committee. The Title 15 currently provides for a Medical Authorization Review (MAR) Committee and for representatives therein; however, it is not within the scope of a physician license to diagnose or treat dental disease. Equal representation is necessary for dentistry as an interface with the oversight of the Health Care Review (HCR) Committee. The DAR and the MAR are subcommittees of the HCR. The MAR would review cases specific to medical services and the DAR would review cases specific to dental services.

**Subsection 3352.1(b) is amended** to update the new Division of Correctional Health Care Services within the Department and to update and add new HCR committee representatives at each institution. This is necessary to accurately reflect the changes within the Department due to the re-organization and as a result of the Stipulated Agreement of *Perez v. Tilton*.

**Subsection 3352.1(c) is amended** to accurately reflect the position and division names change within the Department due to the re-organization. In addition to the treating physician, dentists within the institution will now notify the inmates of the HCR committee's decision with regards to treatment. This is necessary to ensure that dentistry within the institution receives equal representation and an equal voice with regards to inmate treatment and care.

**Subsection 3352.1(d) is adopted** to ensure that decisions regarding medical services which have been referred by the MAR committee shall be voted on by the Assistant Deputy Director, Clinical Policy and Programs Branch, the Statewide Medical Director, and the medical staff of the HCR. Decisions to approve or deny an excluded service regarding medical services shall be based upon a quorum of the majority of the above members. This is necessary to ensure that decisions regarding medical services are made by medical staff/personnel that are specifically trained and knowledgeable of medical conditions and services. Furthermore, the treating physician of the inmate will notify the inmate of the committee's decision, specific to medical services.

**Subsection 3352.1(e) is adopted** to ensure that decisions regarding dental services which have been referred by the MAR committee shall be voted on by the Assistant Deputy Director, Clinical Policy and Programs Branch, the Statewide Dental Director, and the dental staff of the HCR. Decisions to approve or deny an excluded service regarding dental services shall be based upon a quorum of the majority of the above members. This is necessary to ensure that decisions regarding medical services are made by dental staff/personnel that are specifically trained and knowledgeable of dental conditions and services. Furthermore, the treating physician of the inmate will notify the inmate of the committee's decision, specific to dental services.

**New subsection 3352.2(a) is adopted** to establish the Dental Authorization Review (DAR) Committee. As part of the *Perez vs. Tilton*, Stipulated Agreement, the Department established a standard monitoring committee. This is necessary to ensure that the standards set forth by the Court for the otherwise excluded dental services for inmates are properly reviewed.

**New subsection 3352.2(a)(1) through (3) is adopted** to specify the purpose of the DAR Committee. The DAR shall approve or disapprove requests for otherwise excluded dental Services. They are tasked with reviewing treatment recommendations for special dental care needs, and evaluating the cost efficiency and effectiveness of the dental services provided at the institution. This is necessary to specify the purpose of the DAR Committee and their duties as required by the Stipulated Agreement.

**New subsection 3352.2(b) is adopted** to list the representatives from each institution who will comprise the DAR committee. The DAR membership consists of the Chief Dentist, or designee, a staff Dentist as Chairperson, and a Staff Dentist as Vice Chairperson. This is necessary to ensure that the standards set forth by the Court in the Stipulated Agreement are included in the regulatory text.

**New subsection 3352.2(c) is adopted** to specify that decisions made by the DAR committee follow criteria established in section 3350.1(d). Section 3350.1(d) details factors by which excluded conditions can be treated if approved. This section further states that committee decisions shall be documented in the inmate's unit health

record. Additionally, cases that receive committee approval shall be forwarded along with all supporting documentation to the HCR. This emergency regulation is necessary to ensure that inmates receive proper dental care as required in the Stipulated Agreement. Proper documentation is necessary to ensure supporting information is maintained and forwarded to the HCR for further treatment. Timely notification of the inmate keeps the inmate informed and allows for treatment pursuant to the Stipulated Agreement.

**Subsections 3354(a) through (e) are unchanged.**

**Subsection 3354 (f) is amended** to ensure that inmates who, during a dental sick call are evaluated and scheduled into either the emergency care category, the urgent care category, the interceptive care category or the routine rehabilitative care category. The emergency or urgent care categories are inmates who are in either considerable pain or with an acute illness requiring immediate dental services to prevent death, severe or permanent disability, or if the condition is likely to remain acute, worsen, or become life threatening without treatment. Immediate treatment for an emergency shall be provided and will be available to such inmates 24 hours a day, 7 days a week. Urgent care is broken down into priority categories and care shall be provided pursuant to those categories as follows: within 24 hours of diagnosis, 30 days of diagnosis or 60 days of diagnosis. Interceptive care shall be provided to inmates within 120 days of diagnosis. Interceptive care does not require immediate treatment, however treatment within the 120-day time period is required pursuant to the Stipulated Agreement. Routine rehabilitative care is provided to inmates that have over twelve months remaining to serve on their sentence within the department, and must meet oral health self-care requirements to be placed in this category. Such inmates shall receive treatment within one year of diagnosis and assignment. The new Dental Priority System replaces the old dental class system. The Stipulated Agreement in the Perez v. Tilton Lawsuit requires this new Dental Priority System be in place immediately and requires regulations regarding this new system. This regulation is necessary on an emergency basis to ensure that this new system is in place immediately so that it can address the needs of inmates/patients in a very timely manner ensuring property dental care.

**Subsection 3358(a) is unchanged.**

**Subsection 3358(b) is amended** to delete language regarding the removal of gold in an inmate's mouth. Federal and State OSHA guidelines stipulate specific methods of disposal of infectious waste or materials contaminated with infectious waste. Gold often is contaminated with the inmate's blood or saliva and tissue can be imbedded in the inmate/patient's tooth, which is attached to the gold. Furthermore, the value of the gold versus the administrative time and liability to insure the inmate's choice of disposal is not justifiable, and is not required in the new Dental Priority System.


**Subsection 3358(c) is amended** to include instructions to departmental dentists regarding dental appliances made from precious metal. Dental appliances made from precious metal are costly and are beyond general dental standards. Repairs to precious metal appliances are costly, require special equipment and materials to complete the repair and are not provided routinely in a general dental practice in the community. In keeping with the Stipulated Agreement, dentists shall offer the inmate the option of having a new prosthesis made if the inmate's appliance or prosthesis is made from precious metal. This will ensure cost effective treatment, and ensure proper and timely treatment pursuant to the new Dental Priority System as required by the Stipulated Agreement.

CERTIFICATION OF OPERATIONAL NECESSITY  
[Per Penal Code Section 5058.3]

In order to carry out the order by Judge Jeffrey White in the Stipulated Agreement, *Perez vs. Tilton*, the Department has developed procedures regarding the dental care delivery system. The initial implementation, as ordered by Judge White, must begin immediately.

Due to the serious dental care needs of inmates within the California Department of Corrections and Rehabilitation, and its inability to currently meet the immediate needs of the inmates, and pursuant to *Perez vs. Tilton*, it is necessary that these regulations be promulgated on an emergency basis.

I, James E. Tilton, Secretary (A), Department of Corrections and Rehabilitation, certify that the operational needs of the Department require the proposed adoption, amendment, or repeal of California Code of Regulations, Title 15, Division 3, Sections 3352.1, 3352.2, 3354, and 3358 pursuant to Penal Code Section 5058.3.

  
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JAMES E. TILTON, Secretary (A)  
Department of Corrections and Rehabilitation

8-31-06  
\_\_\_\_\_  
Date